

REMARKS

Claims 1-6 are pending in the present application, of which claims 1, 3, 5, and 6 are in independent form.

Claims 1-6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the hypothetical combination of U.S. Patent No. 6,272,474 (Garcia), and U.S. Patent No. 5,845,266 (Lupien). Reconsideration of the rejections is respectfully requested.

Rejections to the Specification Under 35 U.S.C. § 112, First Paragraph

The Specification has been rejected under 35 U.S.C. § 112, First Paragraph, as not supporting the claim language of an "individual" ask bid and an "individual" buy bid.

Applicants respectfully traverse this rejection.

As stated in section 608.01(o) of the MPEP:

The meaning of every term used in any of the claims should be apparent from the descriptive portion of the specification with clear disclosure as to its import

Usually the terminology of the original claims follows the nomenclature of the specification, **but sometimes in amending the claims or in adding new claims, new terms are introduced that do not appear in the specification.** The use of a confusing variety of terms for the same thing should not be permitted.

New claims and amendments to the claims already in the application should be scrutinized not only for new matter but also for new terminology. **While an applicant is not limited to the nomenclature used in the application as filed, he or she should make appropriate amendment of the specification whenever this nomenclature is departed from by amendment of the claims so as to have clear support or antecedent basis in the specification for the new terms appearing in the claims.**

MPEP § 608.01(o) (emphasis added).

In Accordance with MPEP § 608.01(o), applicant submits that the addition of the term "individual" does not add a confusing variety of terms to the application. Further, applicant submits that the term "individual" has an easily understood ordinary meaning, and that one of ordinary skill in the art, upon reading the specification and drawings of the present application, would understand the recited bids to be "individual bids." Thus, no new matter is added to the application by way of the addition of the term "individual" to the specification and drawings.

According to, for example, the *Merrrian-Webster Online Dictionary*, "individual" means "of, relating to, or distinctively associated with an individual." The specification and drawings of the present application as filed clearly describe, as would be understood by one of skill in the art, that a user (or individual) enters an ask bid, and a user (or individual) can enter a sell bid. (See present application as published at paragraphs [0032] -- [0034]. The concept of "individual" bids is also shown, for example, in FIGS. 3-12 of the present application as filed. In addition, as described in the Abstract of the present application as filed, embodiments of the invention are directed to an auction system whereby a buyer can buy from a seller. Accordingly, the present application is directed to an auction system whereby a seller can sell to a buyer, as opposed to a system to display aggregated market sales and trend information. Accordingly, applicants request that the rejection to the specification under 35 U.S.C. § 112, First Paragraph, be withdrawn.

Rejections to the Claims Under 35 U.S.C. § 112, First Paragraph

Claims 1-6 stand rejected under 35 U.S.C. § 112, First Paragraph, as not being supported by the specification with respect to claims language reciting an "individual" ask bid and an "individual" buy bid.

Applicants traverse the rejection.

As stated in section 608.01(o) of the MPEP:

The meaning of every term used in any of the claims should be apparent from the descriptive portion of the specification with clear disclosure as to its import

Usually the terminology of the original claims follows the nomenclature of the specification, **but sometimes in amending the claims or in adding new claims, new terms are introduced that do not appear in the specification.** The use of a confusing variety of terms for the same thing should not be permitted.

New claims and amendments to the claims already in the application should be scrutinized not only for new matter but also for new terminology. **While an applicant is not limited to the nomenclature used in the application as filed, he or she should make appropriate amendment of the specification whenever this nomenclature is departed from by amendment of the claims so as to have clear support or antecedent basis in the specification for the new terms appearing in the claims.**

MPEP § 608.01(o) (emphasis added).

In Accordance with MPEP § 608.01(o), applicant submits that the addition of the term "individual" does not add a confusing variety of terms to the application. Further, applicant submits that the term "individual" has an easily understood ordinary meaning, and that one of ordinary skill in the art, upon reading the specification and drawings of the present application, would understand the recited bids to be "individual bids." Thus, no new matter is added to the application by way of the addition of the term "individual" to the specification and drawings.

As described above with respect to the rejections to the specification under 35 U.S.C. § 112, First Paragraph, applicants submit that the specification and drawings would be understood by one of ordinary skill in the art to support the claim language reciting "individual" bids. In addition, by way of a previous Amendment, applicants have amended the specification

to more clearly recite the "individual" bid language. Thus, as described in the specification and drawings, by way of the claimed invention, a system is described whereby users enter individual ask and buy bids in an auction environment, as opposed to a system that displays aggregate market trends. Accordingly, applicants request that the rejection to the claims under 35 U.S.C. § 112, First Paragraph, be withdrawn.

Rejections Under 35 U.S.C. § 103(a)

As best understood by Applicants, Garcia describes a system for monitoring and trading stocks that includes the graphical display of bid/ask trade bars. (See Garcia at FIG. 3.) Garcia describes a method wherein information related to bid offers and ask offers is received by the system. (See Garcia at col. 5, lns. 56-60.) The Garcia system graphically displays bid/ask trade bars that include general market information such as the percentage of trades at the ask prices, the percentage of trades at the bid prices, the percentage of trades between the ask and the bid, the bid-to-ask ratio, and the volume of trades over a given interval. (Id. at col. 6, lns. 4-9.) As such, the system described by Garcia displays general market selling trends that can be used as a tool by a trader to inform his or her trading decisions. While Garcia displays ranges of aggregate trade information for a market maker (see FIG. 5 of Garcia), Garcia does not display individual ask and bid prices, and a spread between them.

Claim 1 recites, *inter alia*, a method of conducting an auction utilizing a network computer system in which an "image of at least one scaled graph having incremental bid levels" is displayed "upon a computer monitor reflecting a range of monetary values," an "individual ask bid at a selected incremental bid level" is displayed "upon the scaled graph," and an "individual buy bid at a selected incremental bid level" is displayed "upon the scaled graph." A "spread

having a plurality of the incremental bid levels between the graphically displayed individual ask bid and the graphically displayed individual buy bid" is displayed. The "scaled graph with the displayed individual ask bid, the individual buy bid, and the spread" is reconfigured "in response to the spread decreasing to a selected quantity justifying a reallocation of the incremental bid levels."

In a typical auction, "as the spread narrows the minimal incremental bid may decrease." (See page 3, lns. 2-3, of the specification.) In such circumstances, a participant "may not realize that the minimal incremental bid level [between the current individual buy price and the current individual sell price] has been reduced, and thus the participant may submit a bid which is greater than an amount necessary to gain a controlling bid." (See page 3, lns. 4-6, of the specification.) A benefit of the invention claimed by amended claim 1 is that, in an auction, a buyer or seller can view a graphical display of an individual buy bid, and individual sell bid, and a spread having incremental bid levels, to facilitate accurate and efficient trading between a buyer and a seller during an auction. In addition, the spread is reconfigured "in response to the spread decreasing to a selected quantity justifying a reallocation of the incremental bid levels."

With respect to Garcia, Applicants respectfully submit that Garcia does not describe all of the features of amended claim 1.

While the Examiner contends in his "Response to Arguments" that "[f]igure 5 of Garcia for instance provides a graphical representation of this data for a market maker (Agent ABC)," the examiner fails to point to any specific portion of figure 5 of Garcia that displays, for example, an "individual ask bid." In fact, applicant submits that the reason for this failure on the part of the Examiner is that figure 5 of Garcia depicts a display having "bid/ask trade bars,"

which, in stark contrast to the claimed "individual" bids, displays "percentage of sales at bid prices and percentage of sales at ask prices." See Garcia at col. 5, lns. 62-67.

For example, amended claim 1 recites a method of conducting an auction that includes "displaying an image of at least one scaled graph having incremental bid levels upon a computer monitor reflecting a range of monetary values," "graphically displaying an individual ask bid at a selected incremental bid level upon the scaled graph," and "graphically displaying an individual buy bid at a selected incremental bid level upon the scaled graph." Garcia is not understood to describe the claimed graph having incremental bid levels, an individual ask bid, and an individual buy bid. As discussed above, Garcia is understood to display bid/ask trade bars that include general market information such as the percentage of trades at the ask prices, the percentage of trades at the bid prices, the percentage of trades between the ask and the bid, the bid-to-ask ratio, and the volume of trades over a given interval.

Further, claim 1 recites "graphically displaying a spread having a plurality of the incremental bid levels between the graphically displayed individual ask bid and the graphically displayed individual buy bid." As described above, Garcia does not appear to Applicants to describe these claimed features. Garcia describes bid/ask trade bars that display general market information for a security, but not a spread having incremental bid levels between individual ask and buy bids.

Still further, claim 1 recites "reconfiguring the scaled graph with the displayed individual ask bid, the individual buy bid, and the spread in response to the spread decreasing to a selected quantity justifying a reallocation of the incremental bid levels." Because, as described above, Garcia is not understood to describe an individual ask bid, an individual buy bid, nor a spread having a plurality of the incremental bid levels therebetween, Garcia cannot and does not

describe the claimed reconfiguring of any such "scaled graph with the displayed individual ask bid, the individual buy, bid and the spread in response to the spread decreasing to a selected quantity justifying a reallocation of the incremental bid levels."

Thus, Garcia does not teach, suggest, or provide motivation for the method of conducting an auction as claimed by amended claim 1.

Lupien does not cure these deficiencies of Garcia.

The Examiner, in his "Response to Arguments," points to Lupien describing that certain parameters of the display will "vary between markets." (see Lupien at col 12, lns. 17-26). Such a description is in stark contrast to the claimed invention of the present application, which is directed to "**reconfiguring the scaled graph** with the displayed individual ask bid, the individual buy bid, and the spread **in response to the spread decreasing to a selected quantity** justifying a reallocation of the incremental bid levels." Changing parameters between markets (Lupien) is very different from reconfiguring in response to a spread decreasing (present claimed invention).

As understood by Applicants, Lupien describes a crossing network that displays satisfaction density profiles. The Lupien system appears to allow a trader to set up and preload a price-quantity matrix for buying or selling a security. (See Lupien at FIG. 2.) In general, as understood by Applicants, the matrix facilitates subsequent automated trading in circumstances where a trader might be willing to buy a certain quantity of a security at a first price, but would be willing to buy a larger quantity of that security at a second, lower price (i.e., the price that a trader will buy at is related to the quantity that the trader can buy). (See Lupien at col. 3, lns. 33-36.) In Lupien, the satisfaction density profiles (price-quantity matrices) of buy orders are matched with the satisfaction density profiles of sell orders. (Id. at col. 4, lns. 25-28.) Trades are

then executed automatically, without further input by the traders, as part of a continuous or batch process. Lupien describes that the range and scale of the price and/or quantity axis can be set by a trader, or automatically set. (Id. at col. 3, lns. 33-36.) In Lupien, a price interval parameter 36 enables the trader to set the price interval on the price axis on the satisfaction density profile. (See Lupien at col. 7, lns. 36-38.) As understood by Applicants, Lupien does not mention any rescaling of bid increments. While Lupien does describe automatic scaling (see Lupien at col. 6, lns. 48-52), automatic scaling is very different than rescaling of bid increments. Likewise, while Lupien describes the changing of displays, Lupien does not describe the rescaling of bid increments.

With respect to Lupien, Applicants respectfully submit that Lupien does not describe all of the features of amended claim 1, and does not disclose or suggest the claimed features not described by Garcia, as discussed above. For example, as described above with respect to Garcia, amended claim 1 recites a method of conducting an auction that includes "displaying an image of at least one scaled graph having incremental bid levels upon a computer monitor reflecting a range of monetary values," "graphically displaying an individual ask bid at a selected incremental bid level upon the scaled graph," and "graphically displaying an individual buy bid at a selected incremental bid level upon the scaled graph." Garcia is not understood to describe the claimed graph having incremental bid levels, an individual ask bid, and an individual buy bid. As discussed above, Lupien displays satisfaction density profiles (price-quantity matrices) of buy orders that are subsequently and automatically matched with the satisfaction density profiles of sell orders.

Further, claim 1 recites "graphically displaying a spread having a plurality of the incremental bid levels between the graphically displayed individual ask bid and the graphically

displayed individual buy bid." Again, Lupien is not seen to disclose or suggest these claimed features. Lupien merely describes that the range and scale of the price and/or quantity axis can be set by a trader, or automatically set, and that a price interval parameter enables the trader to set the price interval on the price axis on the satisfaction density profile.

Still further, claim 1 recites "reconfiguring the scaled graph with the displayed individual ask bid, the individual buy bid, and the spread in response to the spread decreasing to a selected quantity justifying a reallocation of the incremental bid levels." Because, as mentioned above, Lupien is not understood to describe an individual ask bid, an individual buy bid, nor a spread having a plurality of the incremental bid levels therebetween, Lupien cannot describe the claimed reconfiguring of any such "scaled graph with the displayed individual ask bid, the individual buy bid, and the spread in response to the spread decreasing to a selected quantity justifying a reallocation of the incremental bid levels."

Thus, Lupien is not believed to teach, suggest, or provide motivation for a method of conducting an auction as claimed by amended claim 1.

Accordingly, Applicants submit that neither Garcia nor Lupien, either taken alone, or in the hypothetical combination proposed by the Examiner (assuming such combination is even permissible), teaches, suggests, or provides motivation for the claimed invention. Therefore, Applicants submit that amended claim 1 is patentable over Garcia and Lupien, and withdrawal of the rejection to claim 1 under 35 U.S.C. § 103(a) is respectfully requested.

Moreover, while the claim 1 of the present application are directed to an auction method where users post buy and sell bids, both Garcia and Lupien are directed to, as described in the Office Action, systems to help users "analyze the trend in the market." Such systems are very different from the claimed auction method.

Claim 2 depends from claim 1. Accordingly, Applicants submit that claim 2 is patentable over any permissible combination of Garcia and Lupien, for at least the reasons stated above with respect to the rejection of claim 1. Therefore, withdrawal of the rejection to claim 2 under 35 U.S.C. § 103(a) is respectfully requested.

Independent claims 3, 5, and 6, as amended, each recite features similar to those discussed above with respect to the rejection of claim 1. For example, amended claim 3 recites, *inter alia*, a method of conducting an auction in which "an individual buy bid" is displayed upon a "graphical scale," "an individual ask bid" is displayed "upon the graphical scale," and "a plurality of incremental bid levels" are displayed "upon the graphical scale between the individual buy bid and the individual ask bid." A "quantity distribution and a monetary valuation of each bid level" are dependent upon "a spread between the individual buy bid and the individual ask bid." The "graphical scale, the individual buy bid upon the graphical scale, and the individual ask bid upon the graphical scale" are redisplayed "in response to a narrowing of the spread between the buy bid and the ask bid with an entry of a new individual bid." A "new quantity distribution and a monetary valuation of each incremental bid level" are "dependent upon the spread between the individual buy bid and the individual ask bid." Similarly, amended claim 5 recites, *inter alia*, a system for auctioning goods between remote users. The system includes "means for displaying an individual sell bid upon a graph," "means for displaying an individual buy bid upon a graph," and "means for determining a spread between the individual sell bid and the individual buy bid." The system includes "means for displaying the plurality of incremental bid levels associated with the spread," and "means for redisplaying the graph, the individual sell bid, the individual buy bid, and the spread upon [a] the video monitors with a reallocation of the quantity and the monetary values associated with the incremental bid levels in

response to a narrowing of the spread with an entry of a new individual sell bid or individual buy bid."

Also similarly, claim 6 recites, *inter alia*, a system for auctioning goods that includes "means for generating a graph having a plurality of incremental levels representing monetary values, wherein a quantity and a monetary value of each incremental level is determined by a spread between an individual buy bid and an individual sell bid," and "means for regenerating the graph and the quantity and the monetary value associated with each incremental level in response to a narrowing of the spread between the individual buy bid and the individual sell bid."

Thus, each of amended independent claims 3, 5, and 6, while different in scope and content, recites features related to the graphical display of an individual buy bid, an individual sell bid, and incremental bid levels therebetween. As stated above in the discussion of the rejection to claim 1, neither Garcia nor Lupien, either taken alone, or in any hypothetical permissible combination, are understood to show or describe these claimed features, but instead, are believed to describe systems that display composite trading information such as, for example, bid/ask trade bars that include general market information such as the percentage of trades at the ask prices, the percentage of trades at the bid prices, the percentage of trades between the ask and the bid, the bid-to-ask ratio (Garcia), or satisfaction density profiles, including price-quantity matrices, of buy orders that are input by traders and then subsequently automatically matched with the satisfaction density profiles of sell orders (Lupien).

Accordingly, Applicants submit that claims 3, 5, and 6 are patentable over any permissible combination of Garcia and Lupien, for at least the reasons stated above with respect

to the rejection of claim 1. Therefore, withdrawal of the rejections to claims 3, 5, and 6 under 35 U.S.C. § 103(a) is respectfully requested.

Claim 4 depends from claim 3. Accordingly, Applicants submit that claim 4 is patentable over any permissible combination of Garcia and Lupien, for at least the reasons stated above with respect to the rejection of claim 3. Therefore, withdrawal of the rejection to claim 4 under 35 U.S.C. § 103(a) is respectfully requested.

In view of the above remarks, reconsideration and an early allowance of the present application is respectfully requested.

CONCLUSION

Applicants' undersigned attorney may be reached by telephone at (973) 597-2500.

All correspondence should continue to be directed to our address listed below.

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